THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24316 OF 2004

Dated 7th March 2007

Between:

The State of Andhra Pradesh,
through the Forest Range Officer, Mancherial,
Adilabad District.

…Petitioner

and

G.Dhanalaxmi W/o.G.Damodar & others.

…Respondents

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O R D E R:

The 1st respondent is the owner of a light commercial vehicle, bearing No.AP-15V-4500. It was seized by the SHO, Mandamarri, at 12 noon on 21.6.2001, on the ground that some teak logs were transported in it. Crime No.127 of 2001 was registered. Thereafter, the cleaner of the vehicle, by name Arukula Kanaka Raju, was apprehended. The matter was made over to the authorities of the Forest Department.

Proceedings were initiated before the Additional Sub-Divisional Forest Officer-cum-Authorized Officer, Luxettipet. Under Section 44 (2E) of the A.P. Forest Act, 1967. Notices were issued to the owner of the vehicle, the driver and the cleaner. The 1st respondent pleaded that the vehicle was engaged, only for the

purpose of transporting empty bottles, and without her knowledge, the person, who engaged the vehicle, had loaded the teak logs. It was also stated that the driving licence of her husband was seized, much prior to the date of seizure of the vehicle, and thereby, he was not handling the vehicle, at all. Through his order, dated 11.9.2001, the Sub-Divisional Forest Officer, Mancherial, directed confiscation of the vehicle, as well as the teak logs, being carried in it. Aggrieved thereby, the 1st respondent filed C.M.A.No.6 of 2002, in the Court of II Additional District Judge (FTC), Adilabad. The CMA was allowed on 31.8.2004. The order of the appellate court is challenged in this writ petition, by the Forest Department.

It is contended that the lower appellate court failed to see that the 1st respondent did not prove her ignorance, about the factum of loading the teak logs, in the van. Certain other contentions are also advanced.

Learned Government Pleader for Forest submits that in a matter of this nature, the appellate court ought not to have interfered with the order of confiscation. He submits that once the vehicle was found to be loaded with forest produce, the burden to prove absence of knowledge, is upon the 1st respondent, and she failed miserably, in this regard.

Learned counsel for the 1st respondent, on the other hand, submits that the Authorised Officer had drawn a presumption that the husband of the 1st respondent may have been driving the vehicle, and thereby the knowledge can be attributed to her. Learned counsel submits that the doubt expressed by the Authorised Officer, as to the

2nd respondent being the driver of the vehicle, is absolutely without any basis.

The order passed in C.M.A.No.6 of 2002, by the Court of II Additional District Judge, (FTC), Adilabad, through which the order of confiscation was set aside, is challenged in this writ petition. A writ petition cannot be equated to a further appeal, against the CMA. The scope of interference, in such proceedings, is very limited. Even if a different view on facts is possible, it cannot constitute the basis. Where, however, the order passed by the appellate authority is perverse, or is contrary to the evidence on record, this court can certainly interfere with, in a writ petition.

The fact that the vehicle of the 1st respondent was found with teak logs and that it was seized by the police authorities on 21.6.2001, is a matter of record. Since the forest produce was involved, proceedings under Section 44 of the Forest Act were initiated.

The seizure and confiscation of the forest produce and imposition of any punishment against the owner of such goods, must not pose any problem to any adjudicatory forum, as long as such person is not able to produce any permit for carrying the forest produce. The owner of a vehicle who is accused of transporting the material, however, stands on a different footing. The mere fact that the vehicle was found to be carrying forest produce is not sufficient to indict the owner of the vehicle. It must be further established that the owner had knowledge of the loading of the forest produce, in his goods. The burden, in this regard, squarely rests upon the department. The owner of the vehicle cannot be required to prove the negative fact that he did not have the knowledge of the loading of the vehicle with

forest produce.

In the instant case, the Authorised Officer has drawn a presumption that the vehicle may have been driven by the husband of the 1st petitioner, and his knowledge can naturally be attributed to the petitioner herself. This presumption is obviously without any basis. The reason is that the only person apprehended in connection with the whole episode was the cleaner of the vehicle, the 3rd respondent herein. In the earliest statement recorded from him, he stated that Mohd. Sarver, the

2nd respondent herein, was driving the vehicle. In fact, after conducting necessary investigation, the prosecution itself proceeded, on the footing that the vehicle was driven by the

2nd respondent. Therefore, there was absolutely no basis for the Authorised Officer, to doubt the fact that the 2nd respondent was driving the vehicle.

In the appeal preferred by the 1st respondent herein, the appellate court adverted to these aspects, and took the view that the knowledge of the 1st respondent, as to the commission of offence, was not established. A reading of the affidavit filed in this writ petition discloses that the petitioner wanted the

1st respondent, to prove a negative fact, *viz*. that she did not have the knowledge of loading of the forest produce. The same cannot be accepted. This court does not find any basis to interfere with the order passed in the CMA.

The writ petition is accordingly dismissed. No costs.

7th March 2007

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